

CONTENTS OF DEED OR TRANSFER AGREEMENT:

6.1 Contents of Deed

As required by CERCLA Section 120(h)(3), the United States shall include the following or substantially similar language in deferred covenant deeds.

6.1.1 Notice

Pursuant to Section 120(h)(3)(A)(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, (42 U.S.C. §9620(h)(3)(A)(i)), and based upon a complete search of agency files, the U.S. Army (Army) hereby notifies the Grantee of the storage, release, and disposal of hazardous substances on the Property. Attachment 10 provides the following information: (1) the type and quantity of hazardous substances that were known to have been released or disposed of or stored for one year or more on the property; (2) the time such storage, release or disposal took place; and (3) a description of remedial action taken, if any.

6.1.2 Covenant

Grantor warrants that it shall take any additional response action found to be necessary after the date of this conveyance regarding hazardous substances located on the Property on the date of this conveyance.

(1) This covenant shall not apply:

(a) in any case in which the successors(s) or assign(s) of **Grantee**, or any successor in interest to the Property, or part thereof, is a Potentially Responsible Party (PRP) with respect to the Property immediately prior to the date of this conveyance;

For the purpose of this covenant, the successors(s) or assign(s) of **Grantee**, or any successor in interest to the Property, or part thereof, shall not be considered a PRP with respect to the Property due to an action by the successor(s) or assign(s) of **Grantee**, taken prior to this conveyance pursuant to and in furtherance of the purchase of the Property, or part thereof, unless, and only to the extent, that such action resulted in the release, threatened release or disposal of a hazardous substance on the Property that may result in cleanup liability.

or

(b) to the extent, but only to the extent, that such additional response action or part thereof found to be necessary is the result of an act or failure to act of the successor(s) or assign(s) of **Grantee**, or any party in possession after the date of this conveyance that either:

(i) results in a release or threatened release of a hazardous substance that was not located on the Property on the date of this conveyance; or

(ii) causes a release or threatened release of a hazardous substance the existence and location of which was known and identified to the applicable regulatory authority as of the date of this conveyance;

but only if the successor(s) or assign(s) of **Grantee**, or any party in possession after the date of this conveyance, had a legal duty to act or had actual knowledge of the need to act and failed to take reasonable mitigating actions.

(2) In the event **Grantee**, its successor(s) or assign(s), seeks to have **Grantor** conduct or pay for any additional response action, as a condition precedent to **Grantor** incurring any additional cleanup obligation or related expenses, the **Grantee**, its successor(s) or assign(s), shall provide **Grantor** at least 45 days written notice of such a claim and provide credible evidence that:

(a) the associated hazardous substance existed on the date of this conveyance; and

(b) the need to conduct any additional response action or part thereof was not the result of any act or failure to act by the **Grantee**, its successor(s) or assign(s), or any party in possession.

6.1.3 Access

Grantor reserves a right of access to all portions of the Property for environmental investigation, response activities, or other corrective action. This reservation includes the right of access to and use of available utilities at reasonable cost to Grantor. These rights shall be exercisable in any case in which an investigation, response action or corrective action is found to be necessary after the date of this conveyance, or in which access is necessary to carry out an investigation, response action, or corrective action on adjoining property. Pursuant to this reservation, the United States of America, and its respective officers, agents, employees, contractors, and subcontractors shall have the right (upon reasonable advance written notice to the record title owner) to enter upon the Property and conduct investigations and surveys, to include drilling, test-pitting, borings, data and records compilation, and other activities related to environmental investigation, and to carry out removal, remedial, or corrective actions as required or necessary, including but not limited to the installation and operation of monitoring wells, pumping wells, and treatment facilities. Any such entry, including such activities, shall be coordinated with the record title owner and shall be performed in a manner that minimizes interruption with activities of authorized occupants. Grantor will provide the record title owner reasonable advance notice of such activities.

6.1.4 Non-Residential Use Restriction

The Grantee will be limited to non-residential use of the unremediated Property, to include necessary remediation during the deferred covenant period, unless modification of the use to other than industrial is obtained by further remediation as approved by the appropriate regulatory authorities. The following clause language will be utilized:

Grantee, for itself and its successors and assigns, covenants and agrees that the use of the Property conveyed under the deferred covenant shall be limited to non-residential use only. Prohibited uses include, but are not limited to, child care, pre-school, playground or any form of housing.

(1) In the event the successor(s) or assign(s) of Grantee, desires to use the Property for any use other than non-residential use, then the successor(s) or assign(s) of Grantee, shall perform all additional environmental remediation required by law and the applicable federal, state and/or local regulatory authorities for such other uses and shall further comply with all laws, rules, regulations and ordinances pertaining thereto, including but not limited to zoning requirements and the requirements of all applicable regulatory authorities.

(2) Any such additional remediation beyond industrial use undertaken by successor(s) or assign(s) Grantee shall also be subject to the review and advance approval of the applicable federal and/or state authorities. The approval procedure is set forth in the *Matrix of Reservations, Covenants, Conditions, Notices and Use Restrictions for Proposed Multiple Conveyances of Sunflower Army Ammunition Plant* ("Matrix"), recorded in Book ____, at Page ____, of the records of the Johnson County Clerk.

(3) Upon written request by the successor(s) or assign(s) of Grantee, and without any payment of funds by Grantor, Grantor agrees, upon completion of any additional remedial action performed by Grantee, its successor(s) or assigns(s), under this paragraph, to cooperate with Grantee, its successor(s) or assign(s), in any application, permit, order, or effort to obtain approval from appropriate regulators for other than industrial use and the removal or revision of this restriction. The procedure for obtaining such cooperation from Grantor is set forth in the *Matrix of Reservations, Covenants, Conditions, Notices and Use Restrictions for Proposed Multiple Conveyances of Sunflower Army Ammunition Plant* ("Matrix"), recorded in Book ____, at Page ____, of the records of the Johnson County Clerk.

6.2 Response Action Assurances Required by CERCLA Section 120(h)(3)(C):

6.2.1 Interim Environmental Restrictions to Protect Public Health and the Environment and to Prevent Interference with Response Activities

The following covenants and restrictions shall apply until all necessary remediation required by CERCLA section 120(h)(3) is completed and the United States provides the covenant required by CERCLA section 120(h)(3)(A)(ii) that all necessary remedial action has been taken.

6.2.1.1 SWMU Areas Ground Disturbance Restriction

The Army and regulatory agencies have identified certain SWMUs where all appropriate response actions have not been completed as of the time of the transfer. As a result, a ground disturbance restriction is necessary. The Grantee will be restricted from any physical or structural changes or ground surface disturbance, except that required for further investigation, study, analysis, and remediation, as appropriate, until the area is remediated consistent with the State of Kansas requirements and CERCLA section 120(h)(3). Upon satisfactory completion of

any necessary remediation, these restrictions may be removed by the Department of the Army, subject to any necessary restrictions related to groundwater monitoring. As the result of specific remedial activities being completed on these parcels, such as the creation of a landfill or other permanent remedial system, other additional restrictions may be imposed by regulatory agencies as part of the remedial process.

The following clause language will be utilized:

Grantee, for itself and its successors and assigns, covenants and agrees that no physical or structural change(s) or disturbance of ground surface shall be permitted in, on, or immediately adjacent to the SWMU Areas specifically described in Attachment _____, hereto, except that required for such further investigation, study, analysis, or remedial activities as permitted by applicable federal or state regulatory authorities.

(1) In the event Grantee or its successor(s) or assign(s) desire to conduct or allow any use inconsistent with this restriction prior to the completion of all necessary remedial action, then Grantee or its successor(s) or assign(s) shall be required to obtain written permission of the applicable Federal or state regulatory authority for such other uses and shall further comply with all laws, rules, regulations, and ordinances pertaining thereto, including but not limited to zoning requirements and the requirements of all applicable regulatory authorities.

(2) Upon written request by the successor(s) or assign(s) of Grantee, Grantor agrees, upon completion of any necessary, required remedial action under this paragraph, to remove this specific restriction. The procedure for obtaining such removal of this restriction is set forth in the *Matrix of Reservations, Covenants, Conditions, Notices and Use Restrictions for Proposed Multiple Conveyances of Sunflower Army Ammunition Plant* ("Matrix"), recorded in Book _____, at Page _____, of the records of the Johnson County Clerk.

6.2.1.2 Areas of Concern Ground Disturbance Restriction

The areas identified with this restriction, although not characterized as SWMUs, have been identified by the Army, KDHE and EPA as requiring further investigation, and possibly remediation, prior to the Department of the Army granting the CERCLA covenant. The Grantee will be restricted from any physical or structural changes or ground surface disturbance in these areas, except that required for further investigation, study, analysis, and possible remediation, as appropriate, unless such activity is approved by KDHE. Upon completion of any further investigation and necessary response action, as required by CERCLA section 120(h)(3), this restriction may be removed by the Department of the Army, subject to any necessary restrictions related to groundwater monitoring. As the result of specific remedial activities, as necessary, being completed on these parcels, such as the creation of a landfill or other permanent remedial system, other additional restrictions may be imposed by regulatory agencies as part of the remedial process.

The following deed language will be utilized:

Grantee, for itself and its successors and assigns, covenants and agrees that no

physical or structural change(s) or disturbance of ground surface shall be permitted in, on, or immediately adjacent to identified Areas of Concern (AOC) specifically described in Attachment ___, hereto, except for such further investigation, study, analysis, or remedial activities as permitted by applicable federal or state regulatory authorities.

(1) In the event Grantee or its successor(s) or assign(s) desire to conduct or allow any use inconsistent with this restriction prior to the completion of all necessary remedial action, then Grantee or its successor(s) or assign(s) shall be required to obtain written permission of the applicable Federal or state regulatory authority for such other uses and shall further comply with all laws, rules, regulations and ordinances pertaining thereto, including but not limited to zoning requirements and the requirements of all applicable regulatory authorities.

(2) Upon written request by Grantee or its successor(s) or assign(s), Grantor agrees, upon completion of any necessary, required investigation or remedial action under this paragraph, to remove this specific restriction. The procedure for obtaining such removal of this restriction is set forth in the *Matrix of Reservations, Covenants, Conditions, Notices and Use Restrictions for Proposed Multiple Conveyances of Sunflower Army Ammunition Plant* ("Matrix"), recorded in Book ____, at Page ____, of the records of the Johnson County Clerk.

6.2.1.3 Groundwater Use Restriction

The areas identified with this restriction are areas of known or suspected groundwater contamination associated with prior activities at SUNFLOWER. Until such time as the groundwater within these areas has achieved appropriate remediation standards, as established through the remediation program for SUNFLOWER, the Grantee covenants and agrees for itself and its successors and assigns not to use or access the groundwater in these areas for any purpose, without the express authorization of the appropriate regulatory authorities. The following clause language will be utilized:

Grantee, for itself and its successors and assigns, covenants and agrees that Grantee or its successor(s) or assign(s) shall not construct or allow to be constructed any well, and shall not extract, utilize, consume, or allow to be extracted, any water from any aquifer below the surfaces of the ground within the areas identified in Attachment ___, where the intended use of such water is for the purpose of human consumption, or such other use, unless the groundwater has been tested and found to meet applicable standards for human consumption, or such other use, by the applicable state and local regulatory authorities and such well or extraction is acceptable to KDHE. The costs associated with obtaining use of such water, including, but not limited to, the costs of permits, studies, analysis, or remediation, shall be the sole responsibility of the Grantee or its successors or assigns.

Grantee further covenants and agrees for itself, its successors and assigns, and every successor in interest to the Property not to hinder or prevent the proper and

necessary construction, upgrading, operation, maintenance, and monitoring of any groundwater treatment facilities or groundwater monitoring network.

6.2.1.4 Non-Interference with Response Action

The following provisions will be included in all deferred covenant deeds to prevent interference with the continuing response program at SUNFLOWER.

(D) Grantee covenants and agrees for itself, its successors and assigns, and every successor in interest to the Property, or part thereof, that while the respective parties identified in this paragraph and/or any party occupying the Property are in possession of the Property, they shall not disrupt or prevent the United States of America, its officers, employees, agents, contractors and subcontractors, and any other authorized party or entity from conducting required remedial investigations, response actions or oversight activities or from the proper and necessary construction, upgrading, operation, maintenance, and monitoring of any groundwater treatment facilities or groundwater monitoring network on the Property or adjoining property.

6.3 Completion of Necessary Remediation:

As required by CERCLA section 120(h)(3)(C), the transfer agreement shall contain the following assurances.

6.3. 1 Assurance of Remediation and Schedules

All necessary response actions on deferred covenant property will be taken by the Army or on behalf of the Army by grantee or a third party, as appropriate, pursuant to and consistent with the Consent Order and the terms of the Army Agreement with the grantee . The Consent Order establishes enforceable schedules and deadlines for the performance and completion of environmental investigation and cleanup activities at SUNFLOWER. The Consent Order sets a goal to complete all remediation within 12 years of the effective date of the Order. Where remediation is conducted by Grantee or third party, adequate financial arrangements must be made to ensure the work required under the Consent Order is accomplished in a timely manner. Nonetheless, the Army is ultimately responsible under CERCLA for completing or causing the completion of all remediation necessary to provide the CERCLA covenant. The obligation of the Army to complete or ensure the timely completion of remediation on deferred property is further set forth in an Addendum to the Consent Order. Where Army is required to continue or complete the remediation, appropriate schedules will be developed with regulatory authorities under the RCRA Corrective Action program, consistent with Army funding and CERCLA responsibilities.

6.3.2 Adequate Assurance of Budget Requests or Alternate Funding

Adequate financial arrangements will be made to ensure the remediation for covenant deferred property is timely accomplished under the Consent Order. The Army shall submit, through established channels to the Director of the Office of Management and Budget on an annual basis, appropriate budget requests that adequately address agreed upon schedules for investigation and

completion of all necessary response actions. The actual amount available for such effort is subject to congressional authorizations and appropriations. In the event the grantee or a third party performs cleanup obligations that adequately address agreed upon schedules for investigation and completion of all necessary response action, Army's budget requests will be appropriately reduced.

In the event that cleanup obligations are not adequately being performed by the grantee or a third party, the Army has agreed, notwithstanding any standard risk-based priorities, to take all steps necessary to submit, as soon as possible, a budget request through established channels to the Office of Management and Budget with the priority necessary to support its commitments to ensure the timely completion of remediation of SUNFLOWER to provide the covenant required by CERCLA section 120(h)(3)(A)(ii). Further, the Army has agreed that provided such funds are received by the Army, funding will not be used for any other purpose without the approval of the Assistant Secretary of the Army for Installations and Environment.